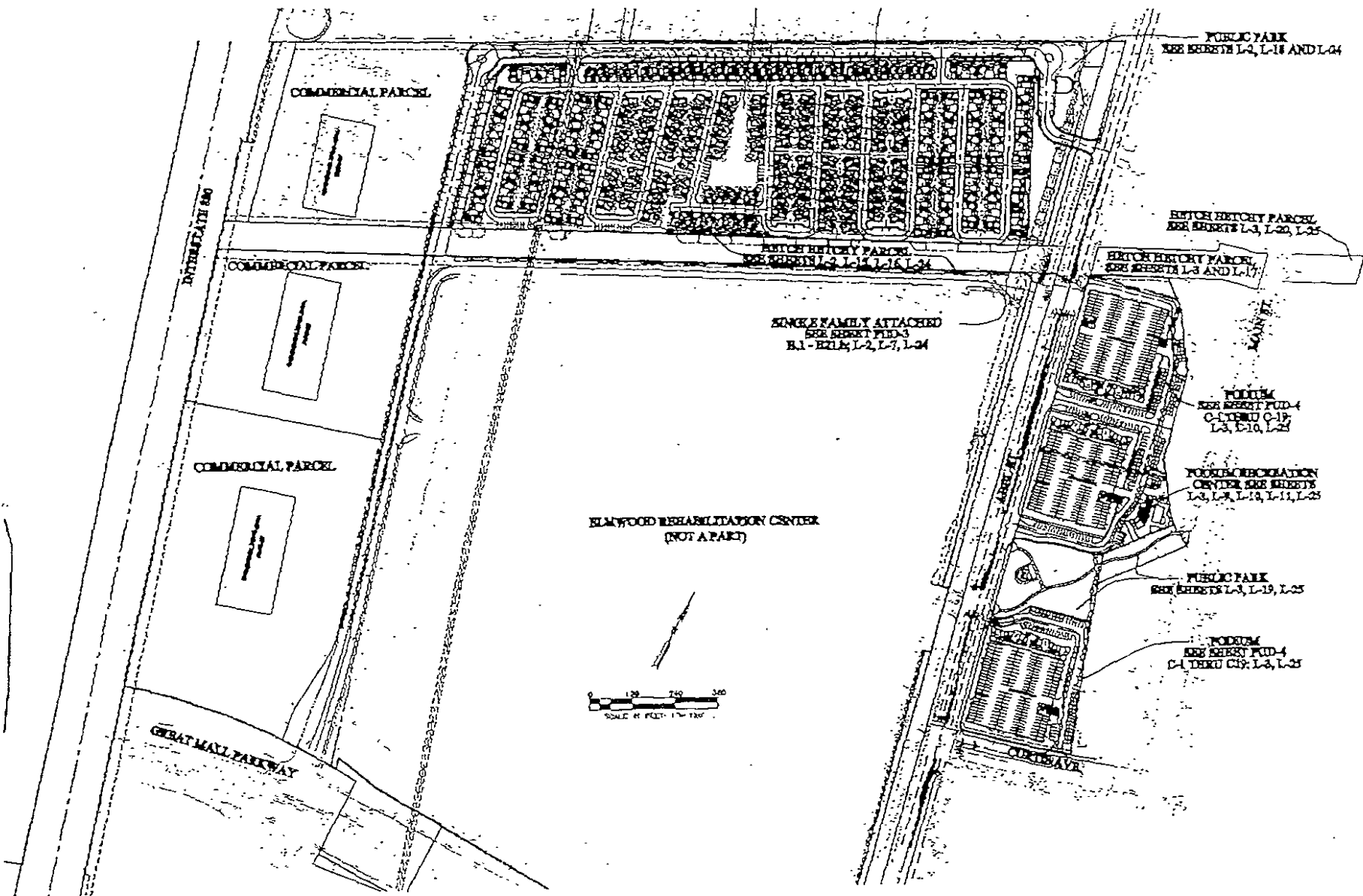


ATTACHMENT NO. 1

SITE MAP

[BEHIND THIS PAGE]



ATTACHMENT NO. 2

LEGAL DESCRIPTION OF THE SITE

[BEHIND THIS PAGE]

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

All that real property situated in the City of Milpitas, County of Santa Clara, State of California, described as follows:

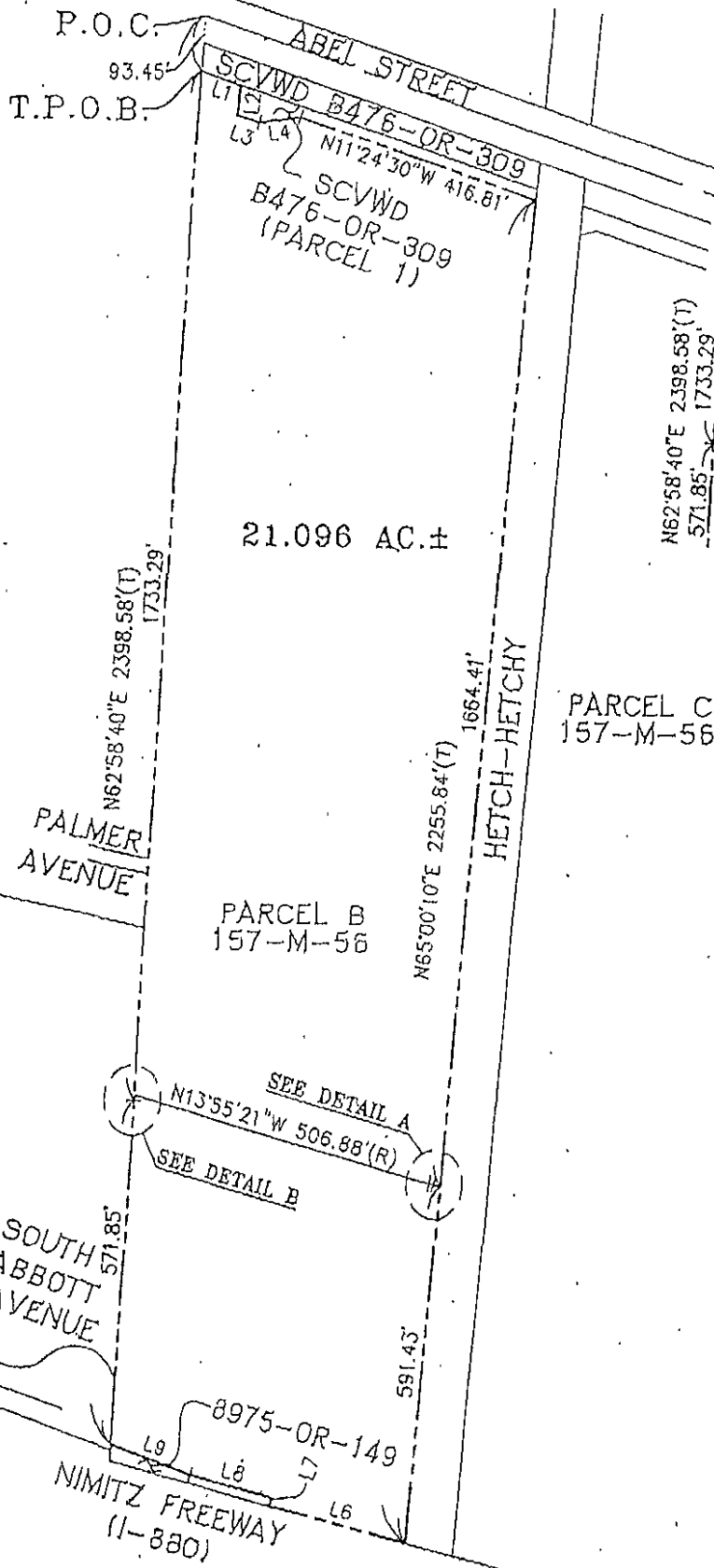
A portion of "Parcel B", as said Parcel is shown on that certain Record of Survey Map filed for record in Book 157 of Maps, at Page 56, Santa Clara County Records, being more particularly described as follows:

**Commencing** at the point of intersection of the centerline of Abel Street with the prolongation of the northerly line of "Parcel B", as shown on said Map; thence running along said northerly line and the prolongation thereof

- a.) S62°58'40"W, a distance of 93.45 feet to the **TRUE POINT OF BEGINNING**, said point being on the westerly line of "Parcel 1A", as described in the deed to the Santa Clara Valley Water District, recorded in Book B476, Page 309, Official Records of Santa Clara County, California; thence leaving said northerly line and running along said westerly line
- 1.) S11°24'30"E, a distance of 71.49 feet to the northerly line of "Parcel 1", as described in said deed; thence leaving said westerly line and running along said northerly line
- 2.) S64°01'03"W, a distance of 51.66 feet to the westerly line of said "Parcel 1"; thence leaving said northerly line and running along said westerly line
- 3.) S11°24'30"E, a distance of 37.00 feet; thence continuing along said westerly line
- 4.) S38°42'28"E, a distance of 69.77 feet; thence continuing along said westerly line
- 5.) S11°24'30"E, a distance of 416.81 feet to the southerly line of said "Parcel B"; thence leaving said westerly line and running along said southerly line
- 6.) S65°00'10"W, a distance of 1,664.41 feet; thence leaving said southerly line
- 7.) N14°48'44"W, a distance of 12.33 feet to the beginning of a curve to the right having a radius of 500.00 feet; thence
- 8.) Northerly along said curve, through a central angle of 00°53'22"; a distance of 7.76 feet; thence
- 9.) N13°55'21"W, a distance of 506.88 feet to the beginning of a non-tangent curve to the left, from which the radius point bears S13°55'21"E, a radial distance of 45.00 feet; thence
- 10.) Westerly along said curve, through a central angle of 13°05'59", a distance of 10.29 feet to the northerly line of said "Parcel B"; thence running along said northerly line
- 11.) N62°58'40"E, a distance of 1,733.29 feet to the **TRUE POINT OF BEGINNING**.

Containing 918,930.81 square feet or 21.0957 acres, more or less.

END OF DESCRIPTION.



# LEGEND

P.O.C.  
T.P.O.B.

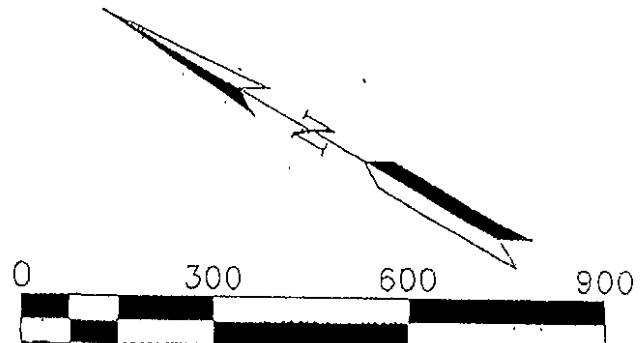
POINT OF COMMENCEMENT  
TRUE POINT OF BEGINNING  
PROPERTY BOUNDARY LINE  
CENTERLINE  
EXISTING LOT LINE  
NEW LOT LINE  
TIE LINE  
TOTAL DIMENSION  
RADIAL BEARING

DETAIL B  
N.T.S.

DETAIL A  
N.T.S.

LINE TABLE		
LINE	BEARING	DIST
L1	N11°24'30"W	71.49'
L2	N64°01'03"E	51.66'
L3	N11°24'30"W	37.00'
L4	N38°42'28"W	69.77'
L5	N14°48'44"W	12.33'
L6	N15°22'17"W	229.42'
L7	N74°37'43"E	14.00'
L8	N15°22'17"W	140.48'
L9	N10°29'54"W	139.91'

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	7.76'	500.00'	0°53'22"
C2	10.29'	45.00'	13°05'59"



SCALE IN FEET: 1" = 300'

PLAT TO ACCOMPANY  
LEGAL DESCRIPTION

A PORTION OF PARCEL B  
BOOK 157 OF MAPS, PAGE 56

CITY OF MILPITAS, SANTA CLARA COUNTY, CALIFORNIA  
P.06/90

**Ruggeri - Jensen - Azar & Associates**  
ENGINEERS • PLANNERS • SURVEYORS  
8055 CAMINO ARROYO • GILROY, CA 95020  
PHONE: (408) 848-0300 • FAX: (408) 848-0302

SCALE: 1" = 300' DATE: 10-26-2004 JOB NO.: 032011  
CITY OF MILPITAS DEC-08-2004 15:20

Westerly end of said strip being the said common boundary between said 96.11 and 25.0 acre tracts of land and the Easterly end of said strip being the Easterly line of said 100.0 acre tract of land in the center of the Penitencia Creek, being a part of the Ellen E. White portion of the Esteros Rancho.

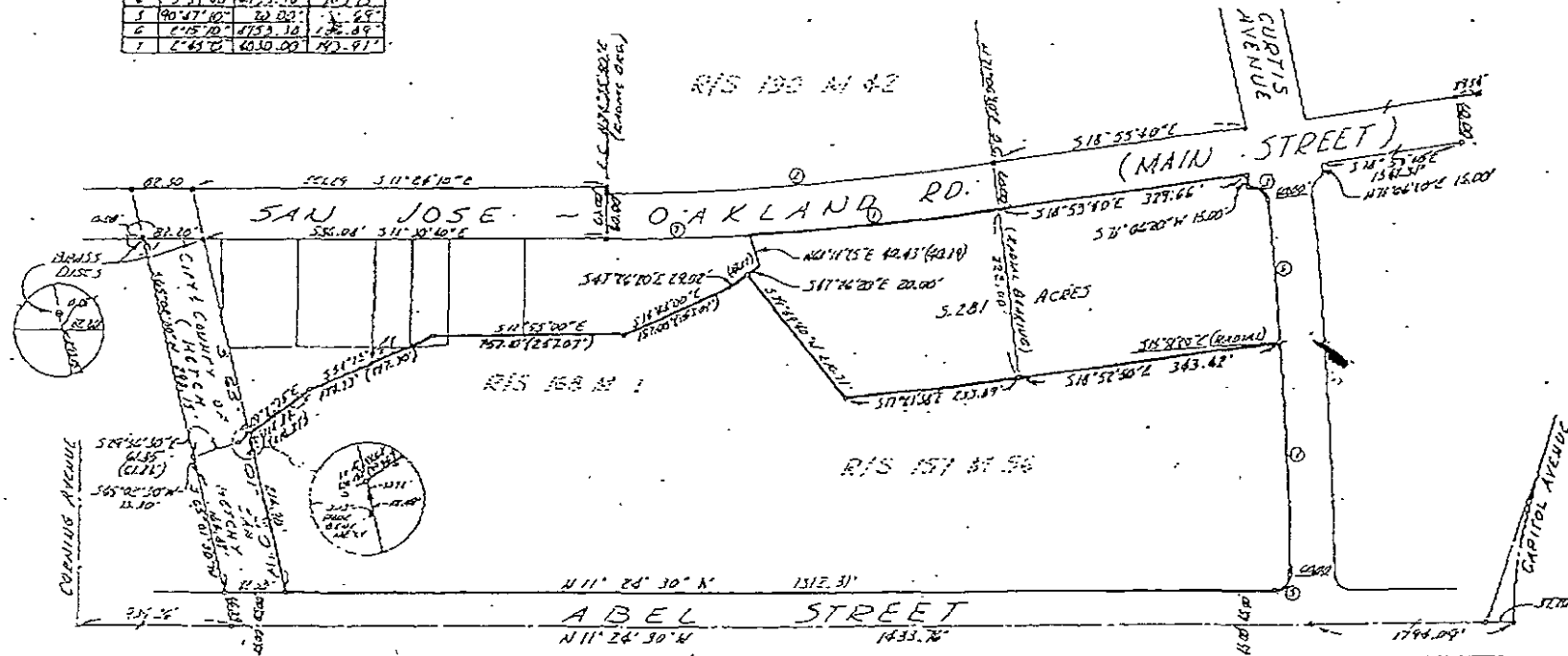
Beginning at the point of intersection of the Easterly line of Abel Street, as established by the deed recorded December 24, 1959 in Book 4646, page 463 of Official Records, and the Southerly line of the lands of the City and County of San Francisco, a Municipal Corporation, as described in the Final Decree in Condemnation recorded December 8, 1950 in Book 2112, page 7 of Official Records, said point of beginning also being the Northwestern corner of Parcel "D", as said Street and Parcel are shown upon that certain Map entitled, "Record of Survey being a portion of Los Esteros and Milpitas Ranchos in City of Milpitas, California", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on March 7, 1963 in Book 157 of Maps at page 56; thence from said point of beginning along the Southerly line of the land of the City and County of San Francisco and the Northerly and Easterly line of said Parcel "D" for the following courses and distances: North 65° 00' 10" East 188.29 feet, North 65° 00' 30" East 26.61 feet, South 49° 22' 40" East 96.99 feet, South 34° 17' 30" East 177.30 feet, South 11° 57' 30" East 257.07 feet, South 34° 46' 30" East 157.01 feet, South 47° 28' 50" East 49.02 feet and North 61° 06' 10" East 40.39 feet to a point in the Westerly line of Main Street, also known as San Jose-Oakland Road; thence Southeasterly along said Westerly line of Main Street, along an arc of a curve to the left, from a tangent bearing South 14° 09' 50" East, with a radius of 4030.00 feet, through a central angle of 4° 44' for an arc distance of 332.93 feet; thence South 18° 53' 50" East continuing along said Westerly line of Main Street for a distance of 329.66 feet to the point of intersection thereof with the Northerly line of Curtis Avenue, as said line was established by Deed from the County of Santa Clara, to the City of Milpitas, dated August 5, 1963, recorded August 23, 1963 in Book 6162 Official Records, page 684, Santa Clara County Records; thence along said Northerly line of Curtis Avenue for the following courses and distances: South 72° 08' 19" West 15.00 feet; thence Southwesterly along an arc of a curve to the right, with a radius of 20.0 feet, through a central angle of 90° 47' 13", for an arc distance of 31.69 feet; thence on a compound curve to the right, with a radius of 4753.38 feet, through a central angle of 5° 54' 54", for an arc distance of 490.72 feet and Northwesterly on a compound curve to the right, with a radius of 20.00 feet, through a central angle of 90° 47' 13" for an arc distance of 31.69 feet to the point of intersection thereof with the said Easterly line of Abel Street; thence North 11° 24' 30" West along said Easterly line of Abel Street for a distance of 1312.31 feet to the point of beginning, and being a portion of Parcel D, as said Parcel is shown upon the Record of Survey Map hereinabove referred to.

Excepting therefrom that portion thereof as conveyed to the City of Milpitas, by deed recorded April 2, 1969 in Book 8484, page 90 of Official Records, more particularly described as follows:

Beginning at the Northeasterly corner of that certain 3.281 acre parcel of land in the Westerly line of San Jose-Oakland Road, also known as Main Street, as said Parcel and Road are shown upon that certain Map entitled, "Record of Survey being a portion of Los Esteros and Milpitas Ranchos in the County of Santa Clara, State of California", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on October 24, 1968 in Book 244 of Maps at page 4; thence from said point of beginning along the Northerly, Northwesterly and Westerly lines of said 3.281 acre parcel of land for the following courses and distances; South 61° 11' 25" West 40.43 feet, North 47° 26' 20" West 20.00 feet, South 39° 49' 40" West 210.71 feet, South 17° 21' 38" East 233.89 feet and South 18° 52' 50" East 343.42 feet to the Southwesterly corner thereof in the Northerly line of Curtis Avenue (60 feet in width), as said line was established by Deed from the County of Santa Clara, to the City of Milpitas, dated August 5, 1963, recorded August 23, 1963 in Book 6162 Official Records, page 684, Santa Clara

CURVE DATA

Sta	Angle	Radius	Chord
1	1° 51' 45"	1030.00'	111.92'
2	1° 59' 10"	1970.00'	319.24'
3	40° 47' 10"	20.00'	17.64'
4	3° 19' 00"	4727.18'	103.11'
5	40° 47' 10"	20.00'	17.64'
6	1° 59' 10"	1970.00'	319.24'
7	1° 51' 45"	1030.00'	111.92'



## LEGEND

- CONCRETE MONUMENT FOUND
- ▲ CITY STANDARD MONUMENT FOUND
- 1" IRON PIPE SET
- IRON PIPE FOUND

## SURVEYOR'S CERTIFICATE

This map correctly represents a survey made by me or under my direction in accordance with the requirements of the laws of the State of California, and I certify that the same is a true and correct copy of the original survey.

Surveyed on OCTOBER 1, 1920 at MILPITAS

By JOHN D. JENNISON

225 N. 16.920

## COUNTY SURVEYOR'S CERTIFICATE

This map has been examined for conformity with the requirements of the laws of the State of California, and I certify that the same is a true and correct copy of the original survey.

Surveyed on OCTOBER 1, 1920 at MILPITAS

By JOHN D. JENNISON

225 N. 16.920

## RECORDER'S CERTIFICATE

This map was recorded for reference with the requirements of the laws of the State of California, and I certify that the same is a true and correct copy of the original survey.

Surveyed on OCTOBER 1, 1920 at MILPITAS

By JOHN D. JENNISON

225 N. 16.920

## BASIS OF BEARING

The bearing (N 11° 24' 30" W) of the centerline of Abel Street, as shown on this certain Record of Survey of a portion of the Milpitas Ranch, filed for record in Book 157 of Maps at page 16 in the County of Santa Clara Recorder's Office.

## RECORD OF SURVEY

BEING A PORTION OF LOS ESTEROS  
AND MILPITAS RANCHOS  
IN THE  
COUNTY OF SANTA CLARA, CALIFORNIA

SCALE: 1" = 100'

OCTOBER, 1968

ATTACHMENT NO. 3  
SCHEDULE OF PERFORMANCE  
[BEHIND THIS PAGE]



ATTACHMENT NO. 3  
SCHEDULE OF PERFORMANCE

ACTION	DATE
1. Execution and Delivery of Agreement by Developer. The Developer shall execute and deliver this Agreement to the Agency.	Prior to public hearing by Agency.
2. Burrowing Owl Mitigation. The County of Santa Clara and the City of Milpitas shall work cooperatively to fully implement the mitigation measures identified to mitigate the impacts to the Burrowing Owl.	Prior to January 31, 2005
3. Close of Escrow for Parcel D. The Agency and Developer shall place into escrow executed grant deeds and the purchase price.	Not later than one day prior to February 19, 2005 or the first business day thereafter except if extended pursuant to Section 502(e)
4. Request to extend escrow for Parcel "C". The Developer may request to extend the closing for the purchase of Parcel "C" according to the conditions of the County and KB's purchase agreement.	Done
5. Close of escrow for Parcel "C" if extension granted.	Within one hundred and eighty days after February 19, 2005 the date for close of escrow for Parcel "D" except if extended pursuant to Section 502(e).
6. Submission of Grading Plans and Penitencia Creek Bridge Plans	Within forty five days after the certification of the EIR and the last discretionary approval, which is anticipated to be March 4, 2005.
7. Submission of Infrastructure estimates. Pursuant to the provisions of this agreement the Developer shall submit estimates for the completion of required infrastructure improvements.	Within six months after close of escrow for Parcel "D".
8. Substantial completion of the existing entry road off of Great Mall Parkway to the site and the entry road parallel to the southerly line of the Hetch Hetchy right-of-way.	No later than November 20, 2005.
9. Substantial completion of Public Parks on Parcel "D" and the Hetch Hetchy right-of-way.	No later than October 1, 2006.
10. Substantial completion of Public Parks on Parcel "C".	No later than October 1, 2007.

ATTACHMENT NO. 4

FORM OF GRANT DEED

[BEHIND THIS PAGE]

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:  
REDEVELOPMENT AGENCY OF THE CITY  
OF MILPITAS  
455 E. Calveras Boulevard  
Milpitas, California 95035  
Attn: Executive Director

SPACE ABOVE THIS LINE FOR RECORDER'S USE

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS, a public body corporate and politic of the State of California, herein called "Grantor", hereby grants to KB HOME SOUTH BAY, INC., a California corporation, herein called "Grantee", the real property, hereinafter referred to as the "Property", described in the document attached hereto, labeled Exhibit "A" and incorporated herein by this reference.

3. The Property is conveyed to Grantee at a purchase price (herein called the "Purchase Price") determined in accordance with the uses permitted by the DDA. Therefore, Grantee hereby covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Property that the Grantee, such successors and assigns, shall:

Grant Deed  
Page 1 of 7

- a. Develop and construct the following: 315 podium condominiums east of Abel Street, on the portion of the Property referred to herein as Parcel "C", 85 of which condominiums shall be occupied by and sold exclusively to qualified Moderate Income households at an Affordable Housing Cost in accordance with the DDA; 165 single-family detached homes and 203 flats and townhomes north of the Elmwood Correctional Facility on the portion of the Property referred to herein as Parcel "D", of which 25 of the townhomes shall be occupied by and sold exclusively to qualified Moderate Income households at an Affordable Housing Cost in accordance with the DDA; approximately 7 acres of public parks, including 2.7 acres to be dedicated to the City of Milpitas (1.6 acres of park on Parcel "C" and 1.1 acres of park on Parcel "D") and 4.3 acres to be developed on the Hetch Hetchy right-of-way; and 10 acres to be developed as two private park/recreation areas, including one within and/or adjacent to Parcel "C" and one within and/or adjacent to Parcel "D"; all as described in the Entitlements (as defined in the DDA). Provided, however, that the precise number of housing units of all types is subject to adjustment to reflect the actual number of housing units approved as part of the Entitlements.
- b. Maintain and keep the buildings and related improvements on the Property in good repair and free from any accumulation of debris, graffiti or waste materials, maintain the landscaping required to be planted in a healthy and attractive condition, and take all other actions necessary to maintain and ensure the neat and clean appearance of the Property. The Property shall be maintained in a professional manner. In the event of the Grantee's or any successor's failure to comply with this Section, the Grantor, on two (2) weeks' prior written notice, may cause such compliance and upon the completion thereof, its cost shall be borne by the Grantee or its successor (as the case may be) and until paid, shall be a lien against the Property. Grantee shall have the right to assign its responsibilities pursuant to this paragraph b. to the purchasers of the residential units.

4. Grantee hereby covenants for itself, its successors, its assigns and every successor in interest to the Property that, prior to recordation of a Certificate of Completion or Partial Certificate of Completion for the improvements (the "Improvements") on the Property in accordance with the DDA:

- a. The Grantee shall not sell, transfer, convey, encumber, lease or assign the Property, or any part thereof, or any interest therein, without the prior written consent of the Grantor, except as permitted by the DDA.
- b. The Grantee shall not place or suffer to be placed on the Property any lien or encumbrance other than mortgages, deeds of trust, sales and leases-back or other methods of financing the Improvements and developing the Property that is permitted by the DDA.

5. The Grantee covenants and agrees for itself, its successors, assigns and any successor in interest to the Property, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, national origin, ancestry, age, physical handicap, medical condition, marital status, sex or sexual orientation in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of their Property, nor shall the Grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, leases, subtenants, sublessees, or vendees in the Property. The foregoing covenants shall run with the land.

All deeds, leases or contracts made relative to the Property, the Improvements thereon, or any part thereof shall contain or be subject to substantially the following non-discrimination or non-segregation clauses:

- a. In deeds: "The Grantee herein covenants by and for himself, his heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin or

ancestry in the sale, lease, sublease, transfer, use occupancy, tenure or enjoyment of the land herein conveyed, nor shall the Grantee himself or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. the foregoing covenants shall run with the land."

- b. In leases: "The lessee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons, on account or race, color, creed, religion, national origin, ancestry, age, physical handicap, medical condition, marital status, sex or sexual orientation in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein leased."

- c. In contracts: "there shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, creed, religion, national origin, ancestry, age, physical handicap, medical condition, marital status, sex or sexual orientation in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself or any person claiming under or through him, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land."

6. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed or in the DDA shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other security instrument permitted by this Grant Deed and made in good faith and for value; provided, however, that any subsequent owner of the Property shall be bound by such remaining covenants, conditions, restrictions limitations and provisions, whether such owner's title was acquired by foreclosure, trustee's sale or otherwise, and shall be entitled to all the benefits granted to Grantee and its assigns hereunder.

7. Following completion of construction of the Improvements, and the Grantor's determination, to be made reasonably and in good faith, that the completed Improvements comply with the DDA, and the covenants contained herein, and the sale of the Affordable Units to Moderate Income purchasers as required by the DDA, Grantor shall issue and record a Certificate of Completion or Partial Certificate of Completion, as provided in the DDA. Following the recording of said Certificate of Completion, the only on-going obligation of Grantee, and its successors and assigns shall be as provided in Sections 3.b. and 5 hereof.

8. All covenants without regard to technical classification or designation shall be binding for the benefit of the Grantor and the City, and such covenants shall run in favor of the Grantor and City for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor or City is or remains an owner of any land or interest therein to which such covenants relate. The Grantor and/or the City, in the event of any breach of any such covenant, shall have the right to exercise all the rights and remedies, and to maintain any action at law or suits in equity or other proper proceedings to enforce the curing of such breach.

9. All covenants contained in this Grant Deed shall be construed as covenants running with the land and not as conditions which might result in forfeiture of title.

10. Both before and after recording of the Certificate of Completion or a Partial Certificate of Completion, only the Grantor, its successors, and assigns, and Grantee and the

successors and assigns of Grantee in and to all or any part of the fee title to the Property, or any part thereof, shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants, easements, or other restrictions contained in this Grant Deed or to subject the Property to additional covenants, easements, or other restrictions without the consent of any tenant, lessee, easement holder or licensee. The covenants contained in this Grant Deed without regard to technical classification or designation shall not benefit or be enforceable by any person, firm, or corporation, public or private, except Grantor, the City and Grantee and their respective successors and assigns.

11. The covenants set forth in Sections 3.a. and 4 of this Grant Deed shall terminate upon the issuance by the Grantor of the Certificate of Completion or Partial Certificate of Completion. The covenants set forth in Section 3.b. of this Grant Deed shall terminate on \_\_\_\_\_ (the termination of the effectiveness of the Redevelopment Plan). The covenants and prohibitions against discrimination set forth in Section 5 shall remain in perpetuity.

12. In the event of any express conflict between this Grant Deed and the DDA, the provisions of this Grant Deed shall control.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be executed on its behalf.

REDEVELOPMENT AGENCY OF THE CITY  
OF MILPITAS

By: \_\_\_\_\_  
Executive Director

APPROVED AS TO FORM AND LEGALITY  
Steven Mattas  
Agency General Counsel

By: \_\_\_\_\_

Milpitas\kbh\deed  
11-30-04

Grant Deed  
Page 6 of 7



STATE OF CALIFORNIA            )  
                                  ) ss.  
COUNTY OF SANTA CLARA        ).

On \_\_\_\_\_ before me, \_\_\_\_\_, personally  
appeared \_\_\_\_\_, personally known  
to me (or proved to me on the basis of satisfactory evidence) to  
be the person(s) whose name(s) is/are subscribed to the within  
instrument and acknowledged to me that he/she/they executed the  
same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument the person(s), or  
the entity upon behalf of which the person(s) acted, executed  
the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

EXHIBIT A

LEGAL DESCRIPTION

ALL THAT CERTAIN LAND SITUATED IN THE STATE OF CALIFORNIA,  
COUNTY OF SANTA CLARA,, CITY OF MILPITAS DESCRIBED AS FOLLOWS:

ATTACHMENT NO. 5

APPROVED INFRASTRUCTURE WORK AND MITIGATIONS

[BEHIND THIS PAGE]

ATTACHMENT NO. 5

INFRASTRUCTURE AND MITIGATIONS DEFINED

The Approved Infrastructure Work and Approved Mitigations to be funded by the Redevelopment Agency with "Agency's Funds" are defined as follows:

A. The term "Approved Infrastructure Work" means the actual cost of constructing the following:

1. All underground utilities to the exterior property line(s);

2.. Joint trench under the existing entry road off of Great Mall Parkway estimated to cost \$610,000;

3. All exterior offsite public roadways, curbs, gutters, sidewalks, including all other exterior offsite street improvements;

4. All required exterior offsite storm water runoff improvements;

5. All exterior offsite sewer, water, and storm lines such as necessary improvements to the City's main sewer pump station and upsizing the sewer line within Curtis Avenue and Abel Street to the Hetch-Hetchy, estimated total cost of \$3.27 million;

6. All offsite Abel Street improvements between Great Mall Parkway and Corning Avenue estimated to cost \$7.30 million, including a bridge from Abel Street onto Parcel "D" not to exceed \$800,000;

7. All utilities, joint trenches, street improvements, curb, gutter, sidewalks, storm water runoff improvements, sewer, water, storm lines, traffic signalization and control improvements located on or adjacent to the commercial parcel, the existing entry road off of Great Mall Parkway and/or the existing entry road parallel to the southerly line of the Hetch Hetchy where such improvements are in part or entirely required to serve or benefit the residential parcel estimated total cost of \$5.60 million;



C. Limitations on Use of Agency Funds: Reimbursements to County:

1. Neither park in-lieu fees, park improvement costs, nor improvements within the "exterior property lines" as described in Sections A.8. and A.9., above, (except a bridge connecting Abel Street to Parcel "D" not to exceed \$800,000) shall be reimbursed or paid by the Agency unless Developer first agrees to pay an equal sum to the County.

## EXHIBIT "A" to Attachment #5

updated by JDL on Dec. 7, 2004

Improvement	Estimate	Rounding	Category
Affordable Housing	\$ 1,000,000	\$ 1,000,000	MOU
Hetch Hetchy Ground Lease	\$ 1,500,000	\$ 1,500,000	11 - HH lease
Owl Mitigation	\$ 1,000,000	\$ 1,000,000	B - owls
New Bridge	NTE \$ 800,000	\$ 800,000	C.1 - bridge
New Fire Truck	\$ 500,000	\$ 500,000	Mitigation - 4
North-South Street Surface Impr. (40 ft wide; park'g both sides)	\$ 2,360,000		7 - entry roads
East-West Street Surface Impr. (28 ft wide)	\$ 1,385,000		7 - entry roads
Off-Site Park Contribution	\$ 1,000,000	\$ 1,000,000	
<u>Abel Street &amp; Signal (GM Pkwy - Corning)</u>	\$ 7,295,000	\$ 7,300,000	6 - Abel St.
<u>Abbott Connection (90 deg.)</u>	\$ 1,360,000	\$ 1,370,000	
<u>Sewer Improvements</u>	\$ 3,317,850		
Treatment plant capacity	\$ 466,500		5 - offsite utilites
Upsized line Curtis-HH	\$ 715,000		5 - offsite utilites
Pump station improvements	\$ 2,000,000		5 - offsite utilites
New line in NS road (2020')	\$ 136,350		7 - entry roads
<u>Water</u>	\$ 509,060		
Water Capacity	\$ 84,860		5 - offsite utilites
New domestic line (NS road, HH-GM Pkwy)	\$ 262,600		7 - entry roads
New recycle line (NS road, HH-GM Pkwy)	\$ 161,600		7 - entry roads
<u>Stormwater</u>	\$ 1,282,000		
New line in EW road	\$ 1,080,000		7 - entry roads
New line in NS	\$ 202,000		7 - entry roads
<u>Joint Trench</u>	\$ 606,000	\$ 610,000	2 - joint trenches
NS road (HH - GM Pkwy)	\$ 606,000		
EW road	\$ -		
<u>Traffic</u>	\$ 1,865,000	\$ 1,870,000	12 - traffic
Calaveras / Abel	\$ 1,000,000		
Montague	\$ 465,000		
Great Mall Pkwy	\$ 400,000		
<b>Total</b>	<u>\$ 25,779,910</u>		

ATTACHMENT NO. 6

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

[BEHIND THIS PAGE]



## ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement, dated as of \_\_\_\_\_, 2005, is entered into by and among REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS ("Agency"), K B HOME SOUTH BAY, INC., a California corporation ("Original Developer") and \_\_\_\_\_, a \_\_\_\_\_ ("Assignee") with reference to the following facts:

A. The Agency and Original Developer have heretofore entered into that certain Disposition and Development Agreement, dated as of \_\_\_\_\_ (the "DDA"). The DDA is incorporated herein by this reference.

B. Pursuant to the DDA, the Agency has agreed to convey to Original Developer certain real property described therein as the "Site", and Original Developer has agreed to develop the Site as provided in the DDA (the "Project").

C. Original Developer has formed Assignee, a \_\_\_\_\_ in which Original Developer is the controlling and managing \_\_\_\_\_, to own the Site, and to obtain financing for and construct and sell the homes in the Project, as contemplated by the DDA.

D. As contemplated by the DDA, Original Developer intends to assign the DDA and all related agreements to which Developer is a party to Assignee, and Assignee intends to assume all rights and obligations of Original Developer, as "Developer" thereunder.

NOW, THEREFORE, the Agency, Original Developer and Assignee hereby agree as follows:

1. Original Developer hereby assigns to Assignee all of its right, title and interest in and to the DDA and Assignee hereby accepts such assignment, and assumes all of the obligations of the Developer thereunder and agrees to be bound thereby in accordance with the terms thereof.

2. Assignee shall execute in its name any instrument or document to be executed by the Developer pursuant to the DDA, and be bound thereby in accordance with the terms thereof. The DDA and any other instrument or document to be executed by the

Developer pursuant to the DDA shall be referred to collectively as the "Assigned Agreements."

3. Assignee shall construct the Project in conformance with the DDA and the plans and specifications heretofore approved by the Agency pursuant thereto, subject to revisions and change orders previously approved or deemed approved pursuant to the DDA.

4. Assignee shall assume and perform all executory obligations of Original Developer pursuant to the DDA, without exception.

5. Agency hereby consents to and approves the assumption of the DDA by Assignee.

6. The Agency shall perform any executory obligations of the Agency pursuant to the DDA.

7. The principal address of Assignee for purposes of the DDA is as follows:

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c/o K B Home South Bay, Inc.  
6700 Koll Center Parkway, Suite 200  
Pleasanton, California 94566

8. This Agreement is made for the sole benefit and protection of the parties hereto, and their successors and assigns, and no other person or persons shall have any right of action or right to rely hereon. As this Agreement contains all the terms and conditions agreed upon between the parties, no other agreement regarding the subject matter thereof, shall be deemed to exist or bind any party unless in writing and signed by the party to be charged. Wherever required, any consent or approval of either party shall not be unreasonably withheld or delayed.

9. This Agreement may be executed in several duplicate originals, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and shall become effective upon execution by the parties, as indicated by the signatures below. The signature pages of one

or more counterpart copies may be removed from such counterpart copies and all attached to the same copy of this Agreement, which, with all attached signature pages, shall be deemed to be an original Agreement. When fully executed, the date of this Agreement shall be the later of the dates indicated below:

IN WITNESS WHEREOF, the Agency, Original Developer and Assignee have executed this Agreement.

"Agency"  
REDEVELOPMENT AGENCY OF THE  
CITY OF MILPITAS

By: \_\_\_\_\_  
Executive Director

APPROVED AS TO FORM AND LEGALITY  
Steven Mattas  
Agency General Counsel

By: \_\_\_\_\_

"Original Developer"  
KB HOME SOUTH BAY, Inc. a  
California corporation

By: \_\_\_\_\_  
Name:  
Its:

"Assignee"  
\_\_\_\_\_  
a [\_\_\_\_\_ limited liability  
company]

By: \_\_\_\_\_  
its \_\_\_\_\_

ATTACHMENT NO. 7

FORM OF AGREEMENT AFFECTING REAL PROPERTY

[BEHIND THIS PAGE]

OFFICIAL BUSINESS

Document entitled to free  
recording per Government  
Code Section 6103

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

REDEVELOPMENT AGENCY OF THE CITY  
OF MILPITAS  
455 E. Calveras Boulevard  
Milpitas, California 95035  
Attention: Executive Director

---

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AGREEMENT AFFECTING REAL PROPERTY

THIS AGREEMENT AFFECTING REAL PROPERTY (this "Agreement") is made as of \_\_\_\_\_ by and between THE REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS ("Redevelopment Agency") and K B HOME SOUTH BAY, INC. ("Developer"), with reference to the following facts:

RECITALS

A. Redevelopment Agency and Developer have heretofore entered into that certain Disposition and Development Agreement dated as of \_\_\_\_\_ (the "DDA"), which is incorporated herein by this reference. Any capitalized term not otherwise defined herein shall have the same meaning ascribed to such term in the DDA.

B. Pursuant to the DDA, Developer is purchasing from the Redevelopment Agency and developing that certain real property in the City of Milpitas, County of Santa Clara, State of California, described in Exhibit "A" which is attached hereto and incorporated herein by this reference. Such real property, along with all improvements of every kind and description now or hereafter erected or placed thereon as the context may require, shall be referred to herein as the "Site". The Site consists of Parcel "C" and Parcel "D" as described in Exhibit "A".

C. Subject to the terms and condition of the DDA, Developer has agreed to construct five hundred eighteen (518) single family housing units on the Site, including three hundred fifteen (315) in Parcel C (the "Parcel C Units") and two hundred three (203) in Parcel D (the "Parcel D Units"), and to make available up to one

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12-6-04

Agreement Affecting Real Property

Page 1 of 10

hundred five (105) of the aggregate number of housing units that are developed on the Site to be sold at a sales price that results in Affordable Housing Cost to Moderate Income purchasers, including eighty-five (85) of the Parcel C Units (the "Parcel C Affordable Units") and twenty-five (25) of the Parcel D Units (the "Parcel D Affordable Units").

NOW, THEREFORE, THE REDEVELOPMENT AGENCY AND DEVELOPER COVENANT AND AGREE AS FOLLOWS:

1. Uses - General. Developer and its successors and assigns shall devote the Site (and every part thereof), to the uses specified therefor in the DDA, the Entitlements and this Agreement. Not less than one hundred five (105) of the aggregate number of single family homes to be constructed on the Site shall be occupied by and sold for a sales price that results in Affordable Housing Cost to Moderate Income households, as follows in this Agreement.

2. Defined terms.

"Affordable Housing Cost" shall have the applicable meaning set forth in California Health and Safety Code Section 50052.5(b), which provides as follows: for Moderate Income households, affordable housing cost shall not be less than 28 percent of the gross income of the household, nor exceed the product of 35 percent times 110 percent of the area median income, adjusted for family size appropriate for the unit. In addition, for any moderate income household that has a gross income that exceeds 110 percent of the area median income, adjusted for family size, affordable housing cost may equal an amount that does not exceed 35 percent of the gross income of the household.

"Area Median Income" adjusted for family size, shall mean the area median income for Santa Clara County set forth in schedules of area median income published from time to time by the California Department of Housing and Community Development. Upon request, the Redevelopment Agency shall notify Developer of the applicable Area Median Income limits.

"Housing Cost" shall have the meaning set forth in Title 25, California Code of Regulations, Section 6920.

3. Parcel C Affordable Units.

a. Subject to Developer's acquisition of Parcel C, Developer shall make available for sale exclusively to Moderate Income purchasers, eighty-five (85) of the units constructed in Parcel C (the "Parcel C Affordable Units"). The maximum sales price for each Parcel C Affordable Unit shall be determined in accordance

with the "Affordable Housing Sales Price Calculation Example" attached to the DDA as Attachment No. 9 (which shall be recalculated by the Redevelopment Agency annually), with the assumption that there will be 1.5 occupants per bedroom with no less than one more occupant than bedroom count (i.e., 2 persons for a one-bedroom unit) and with the understanding that the interest rate for purposes of determining the amount of a mortgage to support a promissory note for the purchase of a Parcel C Affordable Unit (and establishing the maximum sales prices in DDA Attachment No. 9), shall be the interest rate in effect at the time the Redevelopment Agency recalculates DDA Attachment No. 9). The Redevelopment Agency shall use the average 30 year fixed rate mortgage defined by Freddie Mac as published in Freddie Mac's weekly primary mortgage market survey as the interest rate. The "Minimum Sales Prices" for the Parcel C Affordable Units shall be the lesser of (i) the price at which similarly sized market rate units within the Site are sold, or (ii) the following sales prices:

One-bedroom Units:	\$290,000
Two-bedroom Units:	\$330,000
Three-bedroom Units:	\$370,000
Four-bedroom Units:	\$400,000

In the event that the market prices (which shall be determined with reference to the price at which similarly sized market-rate units within the Site are sold) of a Parcel C Affordable Unit is less than the Minimum Sales Price, the Redevelopment Agency shall have no obligation to increase the amount of the silent second mortgage loan as otherwise required by paragraph 3.g. below.

b. For purposes of this Agreement, the term "Moderate Income" means a household income that does not exceed 120% of the Santa Clara County median income, as determined, updated and published annually by the California Department of Housing and Community Development, adjusted for household size appropriate for the unit, as defined in California Health and Safety Code Section 50093.

c. Redevelopment Agency shall provide assistance to Developer to qualify purchasers for the purchase of the Parcel C Affordable Units. Certification and recertification of household size and income shall be administered by either the Redevelopment Agency or the Housing Authority of the County of Santa Clara, or another entity designated by the Redevelopment Agency.

d. Developer shall use its best efforts to market the Parcel C Affordable Units to the same extent and in the manner as those being developed on the Site that are not designated as affordable units.

e. Developer shall submit to the Redevelopment Agency a Disbursement Plan that indicates the location of the Parcel C Affordable Units. The Disbursement Plan shall be subject to the approval of the Redevelopment Agency Executive Director or designee, which approval shall not be unreasonably withheld, conditioned or delayed. However, the Parcel C Affordable Units shall be distributed throughout the development as conceptually shown on the Preliminary Distribution Plan attached to the DDA as Attachment No. 11.

f. The conveyance of each Parcel C Affordable Unit shall be subject to a Resale Restriction and Option to Purchase Agreement ("Resale Agreement") substantially in the form attached to the DDA as Attachment No. 10, with such modifications thereto as may be agreed upon by the Redevelopment Agency and Developer, which shall ensure that the income and sales price restrictions applicable to each Parcel C Affordable Unit remain in effect for at least 45 years. The Resale Agreement shall be recorded against each Parcel C Affordable Unit sold by Developer to a Moderate Income purchaser upon the initial close of escrow for the sale of such Parcel C Affordable Unit. Following recordation of the Resale Agreement as required hereunder, the Redevelopment Agency shall have the right to enforce the Resale Agreement and, upon default under any of the terms of the Resale Agreement, the Redevelopment Agency may exercise any and all of its rights and remedies.

g. In order to assure that the Housing Costs payable by the Moderate Income purchasers of the Parcel C Affordable Units are "Affordable Housing Costs", as defined in California Health and Safety Code Section 50052.5, the Redevelopment Agency shall provide a silent second mortgage loan (the "Parcel C Redevelopment Agency Loan") to each initial Moderate Income purchaser of a Parcel C Affordable Unit, in the amount of \$50,000 per Parcel C Affordable Unit (for a maximum total of \$4,250,000 for all 85 Parcel C Affordable Units). The silent second mortgages will be effected at the time of the initial sale of each Parcel C Affordable Unit and the sum of \$50,000 shall be delivered to escrow by the Redevelopment Agency on behalf of the homebuyer as a portion of the purchase price for such Parcel C Affordable Unit. The Redevelopment Agency's silent second mortgage shall be evidenced by a promissory note and secured by a subordinate deed of trust (the "Loan Documents") in the forms attached to the DDA as Attachment No. 12 and Attachment No. 13, respectively. The subordinate deed of trust shall be recorded concurrently with the grant deed for the respective Parcel C Affordable Unit. Notwithstanding the foregoing, in the event that Developer is unable to entice a qualified buyer to purchase any particular Parcel C Affordable Unit at a sales price that is equal to or more than the Minimum Sales Prices,



Redevelopment Agency and Developer shall equally increase the amount of the Redevelopment Agency-approved silent second mortgages by an amount necessary to entice a qualified buyer to purchase the unit, sharing the increased cost 50/50. Developer may choose to contribute its 50% share by reducing the sales price of the unit by an amount equal to the Redevelopment Agency's silent second mortgage loan increase.

#### 4. Parcel D Affordable Units

a. Developer shall make twenty-five (25) of the housing units constructed on Parcel D available to Moderate Income households (collectively, the "Parcel D Affordable Units" and each of which shall constitute an "Affordable Parcel D Unit"); ten (10) of these units shall be detached units, and the remainder may be either detached or townhome units, at the Developer's option. Notwithstanding the preceding sentence, Developer shall have no obligation to sell the Parcel D Affordable Units to Moderate Income households at prices that are less than the price for identically sized market-rate units on Parcel D. Developer shall cooperate with the Redevelopment Agency in ensuring that appropriate deed restrictions or other enforceable covenants running with the land are recorded that ensure the twenty-five (25) units remain affordable upon resale by the initial buyer.

b. Developer shall submit to the Redevelopment Agency a Disbursement Plan that indicates the location of the Parcel D Affordable Units within the development. The Disbursement Plan is subject to the approval of the Executive Director of the Redevelopment Agency, or his or her designee, which approval shall not be unreasonably withheld, conditioned or delayed. However, the Parties agree that the Affordable Units will be distributed throughout the development as conceptually shown on the Preliminary Distribution Plan attached to the DDA as Attachment No. 11.

c. Redevelopment Agency shall provide purchasers of the Parcel D Affordable Units with direct subsidies, silent-second mortgages, or both, necessary to make the units affordable to Moderate Income households. If Redevelopment Agency elects to provide silent second mortgages, the silent-second mortgages will be effected at the time of the sale of each Parcel D Affordable Unit and monies shall be delivered to escrow by the Redevelopment Agency on behalf of the homebuyer for the benefit of the Owner as a portion of the purchase price for each Parcel D Affordable Unit. The Redevelopment Agency's silent-second mortgage shall be secured by a Promissory Note and a Subordinate Deed of Trust ("Loan Documents") in the form attached to the DDA as Attachment No. 12 and Attachment No. 13, respectively. The Deed of Trust shall be recorded concurrently with the grant deed for the Parcel D

5. Preference to Relocates. Developer and its successors and assigns shall provide preference in the selection of eligible purchasers to persons who have been displaced by Redevelopment Agency activities. Developer acknowledges and agrees that this paragraph is intended to comply with Section 33411.3 of the California Health and Safety Code.

7. Compliance with Laws. Developer and its successors and assigns shall operate the Property and the Improvements in conformity with all applicable laws, including all federal and state labor standards. Developer and its successors and assigns further covenant and agree to obtain the Redevelopment Agency's prior written approval before making any material changes to the Improvements or changing the number of Units.

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selection, location, number use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Property.

9. Required Nondiscrimination Clauses. Developer and its successors and assigns shall refrain from restricting the rental, sale or lease of the Property to any person on the basis of race, creed, color, religion, sex, marital status, national origin or ancestry. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) In deeds: "The grantee herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry.

(b) In leases: "The lessee herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through it, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased."

(c) In contracts: "There shall be no discrimination against or segregation of any person, or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee itself or any person claiming under or through it; establish or permit any such practice or practices of discrimination or segregation with reference to the lessees, subtenants, sublessees or vendees of the land."

#### 10. Term of Covenants.

a. Subject to paragraphs b. and c., below, the covenants established in this Agreement Containing Covenants and any amendments hereto shall, without regard to technical classification

and designation, be binding for the benefit and in favor of the Redevelopment Agency and the City of Milpitas. The covenants contained in Sections 8 and 9 of this Agreement shall remain in perpetuity. All other covenants contained in this Agreement shall remain in effect for the longest feasible time, but not less than forty-five (45) years.

b. Notwithstanding paragraph a., this Agreement shall be terminated as to Parcel C and the lien hereof shall be extinguished and released from title to Parcel C upon the occurrence of each of the following: (i) the Developer shall have designated the Parcel C Affordable Units, as shown in the Preliminary Distribution Plan attached to the DDA as Attachment No. 11, with such changes as may be approved by the Redevelopment Agency Executive Director; (ii) the Developer shall have recorded a subdivision map establishing separate legal lots for the Parcel C Affordable Units; and (iii) concurrently with the termination of this Agreement as to Parcel C and the extinguishment and release of this Agreement from title to Parcel C, the Developer shall have recorded against title to each Parcel C Affordable Unit an Agreement Affecting Real Property substantially in the form of this Agreement.

c. Notwithstanding paragraph a., this Agreement shall be terminated as to Parcel D and the lien hereof shall be extinguished and released from title to Parcel D upon the occurrence of each of the following: (i) the Developer shall have designated the Parcel D Affordable Units, as shown in the Preliminary Distribution Plan attached to the DDA as Attachment No. 11, with such changes as may be approved by the Redevelopment Agency Executive Director; (ii) the Developer shall have recorded a subdivision map establishing separate legal lots for the Parcel D Affordable Units; and (iii) concurrently with the termination of this Agreement as to Parcel D and the extinguishment and release of this Agreement from title to Parcel D, the Developer shall have recorded against title to each Parcel D Affordable Unit an Agreement Affecting Real Property substantially in the form of this Agreement.

11. Enforcement. The Redevelopment Agency and the City of Milpitas are deemed to be the beneficiaries of the terms and provisions of this Agreement and the covenants herein, both for and in their own right and for the purposes of protecting the interests of the community and other parties, public or private, for whose benefit this Agreement and the covenants running with the land have been provided. The Redevelopment Agency and the City shall have the right if any covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it is entitled.

12. Defaults. Subject to Force Majeure delays, and subject to the further provisions of this Section 12, failure or delay by Developer to perform any term or provision of this Agreement constitutes a default.

- a. The Redevelopment Agency shall give written notice of default to Developer, specifying the default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.
- b. Any failures or delays by the Redevelopment Agency in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by the Redevelopment Agency in asserting any of its rights and remedies shall not deprive the Redevelopment Agency of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.
- c. If a monetary event of default occurs, prior to exercising any remedies hereunder, Redevelopment Agency shall give Developer written notice of such default. Developer shall have a reasonable period of time after such notice is given within which to cure the default prior to exercise of remedies by Redevelopment Agency. In no event shall Redevelopment Agency be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within thirty (30) days after the notice of default is first given.
- d. If a non-monetary event of default occurs, prior to exercising any remedies hereunder, Redevelopment Agency shall give Developer notice of such default. If the default is reasonably capable of being cured within thirty (30) days, Developer shall have such period to effect a cure prior to exercise of remedies by the Redevelopment Agency. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Developer (i) initiates corrective action within said period, and (ii) diligently and in good faith works to effect a cure as soon as possible, then Developer shall have such additional time as is

reasonably necessary to cure the default prior to exercise of any remedies by Redevelopment Agency. In no event shall Redevelopment Agency be precluded from exercising remedies if its security becomes or is about to become materially jeopardized by any failure to cure a default or the default is not cured within one hundred eighty (180) days after the notice of default is first given.

IN WITNESS WHEREOF, the Redevelopment Agency and Developer have executed this Agreement.

REDEVELOPMENT AGENCY OF THE CITY OF  
MILPITAS

By: \_\_\_\_\_  
Executive Director

APPROVED AS TO FORM AND LEGALITY:  
Steven Mattas  
Redevelopment Agency General Counsel

By: \_\_\_\_\_

KANE, BALLMER & BERKMAN  
Redevelopment Agency Special Counsel

By: \_\_\_\_\_

KB HOME SOUTH BAY, INC., a  
California corporation

By: \_\_\_\_\_  
Name:  
Its:

STATE OF CALIFORNIA     )  
                                  ) ss  
COUNTY OF SANTA CLARA )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
personally appeared \_\_\_\_\_, personally  
known to me (or proved to me on the basis of satisfactory evidence)  
to be the person(s) whose name(s) is/are subscribed to the within  
instrument and acknowledged to me that he/she/they executed the  
same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument the person(s), or the  
entity upon behalf of which the person(s) acted, executed the  
instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary's Signature

(SEAL)

STATE OF CALIFORNIA     )  
                                  ) ss  
COUNTY OF SANTA CLARA )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
personally appeared \_\_\_\_\_, personally  
known to me (or proved to me on the basis of satisfactory evidence)  
to be the person(s) whose name(s) is/are subscribed to the within  
instrument and acknowledged to me that he/she/they executed the  
same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument the person(s), or the  
entity upon behalf of which the person(s) acted, executed the  
instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary's Signature

(SEAL)

EXHIBIT A

DESCRIPTION OF THE SITE

REAL PROPERTY in the City of Milpitas, County of Santa Clara, State of California, described as follows:



ATTACHMENT NO. 8

FORM OF TEMPORARY CONSTRUCTION LICENSE

[BEHIND THIS PAGE]

Construction License and Indemnity Agreement

This CONSTRUCTION LICENSE AND INDEMNITY AGREEMENT ("Agreement") is entered into as \_\_\_\_\_, 200\_\_, between THE COUNTY OF SANTA CLARA, a political subdivision of the State of California ("Seller"), and KB HOME SOUTH BAY INC., a California corporation ("Buyer"), with reference to the following facts:

(a) Seller holds title to certain unimproved real property (the "Property") located in the City of Milpitas, County of Santa Clara, State of California, and as more particularly described on Exhibit A attached hereto.

(b) Seller and Buyer have entered into that certain Agreement for Purchase and Sale of Real Property dated as of August \_\_, 2003 (the "Purchase Agreement") pursuant to which Seller has agreed to sell the Property to Buyer on certain terms and conditions.

(c) Pending Buyer's purchase of the Property pursuant to the Purchase Agreement, Buyer desires the right to enter upon the Property for the purposes of grading, stockpiling fill dirt, site preparation, development, construction of streets, sewers, and model and production homes, installation, maintenance and occupancy of a sales trailer, sales activities and placement of signs and other related improvements and activities incidental thereto.

(d) Seller desires to grant a license to Buyer for such purpose.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement and the Purchase Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grant of Licenses. From and after the date hereof, Buyer (and Buyer's agents, employees, contractors and subcontractors) shall have the non-exclusive right and license to enter upon the Property for the purpose of grading, stockpiling fill dirt, site preparation, development, construction of streets, sewers, and model and production homes, installation, maintenance and occupancy of a sales trailer, sales activities and placement of signs and other related improvements and activities incidental thereto; provided that in conducting all such activities Buyer complies with all laws and regulations applicable and obtains and maintains the insurance described in Paragraph 4. All costs of such work and activity shall be borne solely by Buyer.

2. Effect of Termination of Purchase Agreement Due to Any Reason Other Than Seller's Default. If the Purchase Agreement is terminated prior to Buyer's acquisition of the Property on account of any reason other than a default by Seller thereunder then, except as expressly limited herein:

(a) Buyer shall assign to Seller all of the work Buyer has performed on the Property;

(b) Buyer shall execute any documentation reasonably necessary to convey such work to Seller; and

(c) Buyer shall waive any right to recover its costs in performance of such work from Seller.

Upon such a termination of the Agreement for any reason other than a default by Seller, Buyer's rights to perform work shall immediately and without further notice terminate except that Buyer shall continue to remain on the Property for so long as it is necessary to leave the Property in a safe condition. In no event shall Buyer discontinue its work on or vacate the Property leaving an unsafe condition remaining. If such should occur, Buyer shall pay to Seller the cost it incurs to make such conditions safe. If the Purchase Agreement is terminated for any reason other than a default by Seller, Buyer shall cause the release of any liens against the Property which were recorded against the Property as a result of Buyer's activities thereon. On such a termination of the Purchase Agreement (for any reason other than a default by Seller), Buyer shall immediately deliver to Seller all plans, specifications, permits and documents related to the work performed by Buyer on the Property (provided that nothing herein shall be construed so as to obligate Buyer to deliver any confidential information, market studies or drawings, plans, specifications, or schematics for the attached and/or detached homes that Buyer intends to construct on the Property, except as provided in Section 6.6).

3. Effect of Termination of Purchase Agreement Due to Seller's Default. If the Purchase Agreement is terminated prior to the Buyer's acquisition of the Property due to a default by Seller, then, except as expressly limited herein:

(a) Buyer shall have none of the obligations set forth in Paragraph 2 above (other than to leave the Property in a safe condition and to cause the removal of any liens against the Property which were recorded against the Property as a result of Buyer's activities thereon, except as provided in the final paragraph of this Paragraph 3);

(b) Buyer shall have no obligation to remove any work completed (but Buyer may at its option remove any such work), provided that in all events Buyer shall leave the Property and the work in a safe condition; and

(c) Seller shall reimburse Buyer for all actual costs and expenses incurred by Buyer in performing the work, removing the work (to the extent removed), and making the Property safe, with such reimbursement (the "Reimbursement Payment") to be made within ten (10) days following Buyer's request (following a termination of this Agreement due to a default by Seller).

In the event of a termination of the Purchase Agreement due to a default by Seller, until the Reimbursement Payment is made, Buyer shall have no obligation to remove any liens imposed against the Property in connection with Buyer's activities thereon, and Buyer is hereby granted an equitable lien on and against the Property in the amount of the Reimbursement Payment, together with interest thereon, and costs and expenses of collection, including reasonable attorneys' fees and court or arbitration costs, and Buyer shall have all rights and remedies available to it under law with respect to the enforcement of such lien, including,

without limitation, the right but not the obligation to record a notice of lien against the Property and to enforce that lien to the fullest extent provided by law.

4. Insurance. At any time while Buyer is performing work on the Property, Buyer shall obtain and maintain in full force and effect, at its own expense: (i) a policy of insurance written by one or more responsible insurance carrier(s) which will include Seller as an additional insured; insuring against liability for injury to persons and/or property and death of any person or persons occurring in, on or about Property arising from Buyer's conduct, and the combined single limit of liability under such insurance shall not be less than \$1,000,000; and (ii) all employee's compensation insurance required under applicable Worker's Compensation Acts. Before commencing any work on the Property, Buyer shall furnish Seller with certificates of insurance issued by the appropriate insurance carrier(s) demonstrating compliance with the terms of this paragraph and providing that such insurance shall not be canceled except after thirty (30) days written notice to Seller.

5. Indemnity Regarding Buyer's Activities. Buyer shall indemnify and hold harmless Seller from and against all claims, causes of action, damages, costs, and expenses (including reasonable attorneys' fees and costs), arising from any work or conduct engaged in by Buyer and Buyer's agents, employees, contractors, and subcontractors pursuant to Paragraph 1, or related to the commission or omission of any act in connection with such conduct.

6. Notices. All notices required hereunder shall be in writing, and shall be delivered in the manner specified in the Purchase Agreement.

7. Attorneys' Fees. If any party hereto institutes an action or proceeding for a declaration of the rights of the parties under this Agreement, for injunctive relief, for an alleged breach or default of, or any other action arising out of, this Agreement, or the transactions contemplated hereby, or if any party is in default of its obligations pursuant thereto, whether or not suit is filed or prosecuted to final judgment, the non-defaulting party or prevailing party shall be entitled to its actual attorneys' fees and to any court costs incurred, in addition to any other damages or relief awarded.

8. Binding on Successors. The terms and conditions herein contained shall be binding upon and inure to the benefit of the successors and assignees of the parties hereto.

9. Applicable Law. This Agreement and each and every related document are to be governed by, and construed in accordance with, the laws of the State of California.

10. Partial Invalidity. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction or rendered by the adoption of a statute by the State of California or the United States invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

11. Entire Agreement. This Agreement, together with all Exhibits hereto and documents referred to herein, if any, constitute the entire agreement among the parties hereto

with respect to the subject matter hereof, and supersede all prior understandings or agreements. This Agreement may be modified only by a writing signed by both parties. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement whether or not actually attached.

12. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall, for all purposes, be deemed an original and all such counterparts, taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

KB HOME SOUTH BAY, INC.,  
a California corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

ATTACHMENT NO. 9

AFFORDABLE HOUSING SALES PRICE CALCULATION EXAMPLE

[BEHIND THIS PAGE]

City of Milpitas 2002 Affordable Unit Ownership Assumptions

	Household Income (a)	Sale Price	Down Payment (b)	Total Mortgage	Monthly Payment	Monthly Property Tax (c)	Monthly Insurance & HOA Dues (d)	Total Monthly PITI (e)
<b>Very Low Income - 50%</b>								
1 Person HH - Studio	\$37,150	\$110,447	\$22,089	\$88,357	\$558.48	\$101.24	\$269.03	\$928.75
2 Person HH - 1 Bedroom	\$42,450	\$130,528	\$26,106	\$104,422	\$660.02	\$119.65	\$281.58	\$1,061.25
3 Person HH - 2 Bedrooms	\$47,750	\$150,609	\$30,122	\$120,487	\$761.56	\$138.06	\$294.13	\$1,193.75
4 Person HH - 3 Bedrooms	\$53,050	\$170,690	\$34,138	\$136,552	\$863.10	\$156.47	\$306.68	\$1,326.25
5 Person HH - 4 Bedrooms	\$57,300	\$186,793	\$37,359	\$149,434	\$944.53	\$171.23	\$316.75	\$1,432.50
<b>Low Income - 80%</b>								
1 Person HH - Studio	\$59,400	\$194,750	\$38,950	\$155,800	\$984.76	\$178.52	\$321.72	\$1,485.00
2 Person HH - 1 Bedroom	\$67,900	\$226,955	\$45,391	\$181,564	\$1,147.61	\$208.04	\$341.85	\$1,697.50
3 Person HH - 2 Bedrooms	\$76,400	\$259,161	\$51,832	\$207,329	\$1,310.46	\$237.56	\$361.98	\$1,910.00
4 Person HH - 3 Bedrooms	\$84,900	\$291,367	\$58,273	\$233,093	\$1,473.31	\$267.09	\$382.10	\$2,122.50
5 Person HH - 4 Bedrooms	\$91,650	\$316,942	\$63,388	\$253,554	\$1,602.63	\$290.53	\$398.09	\$2,291.25
<b>Median Income - 100%</b>								
1 Person HH - Studio	\$73,850	\$249,499	\$49,900	\$199,600	\$1,261.61	\$228.71	\$355.94	\$1,846.25
2 Person HH - 1 Bedroom	\$84,400	\$289,472	\$57,894	\$231,578	\$1,463.73	\$265.35	\$380.92	\$2,110.00
3 Person HH - 2 Bedrooms	\$94,950	\$329,445	\$65,889	\$263,556	\$1,665.86	\$301.99	\$405.90	\$2,373.75
4 Person HH - 3 Bedrooms	\$105,500	\$369,418	\$73,884	\$295,535	\$1,867.98	\$338.63	\$430.89	\$2,637.50
5 Person HH - 4 Bedrooms	\$113,950	\$401,435	\$80,287	\$321,148	\$2,029.87	\$367.98	\$450.90	\$2,848.75
<b>Moderate Income - 120%</b>								
1 Person HH - Studio	\$88,600	\$361,335	\$72,267	\$289,068	\$1,827.11	\$331.22	\$425.83	\$2,584.17
2 Person HH - 1 Bedroom	\$101,300	\$417,474	\$83,495	\$333,979	\$2,110.98	\$382.68	\$460.92	\$2,954.58
3 Person HH - 2 Bedrooms	\$113,950	\$473,392	\$94,678	\$378,714	\$2,393.73	\$433.94	\$495.87	\$3,323.54
4 Person HH - 3 Bedrooms	\$126,600	\$529,310	\$105,862	\$423,448	\$2,676.48	\$485.20	\$530.82	\$3,692.50
5 Person HH - 4 Bedrooms	\$136,750	\$574,177	\$114,835	\$459,342	\$2,903.35	\$526.33	\$558.86	\$3,988.54

Notes:

a) From California Dept. of Housing and Community Development.

b) Mortgage terms:

Annual Interest Rate (Fixed)

Term of mortgage (Years)

Percent of sale price as down payment

c) Initial property tax rate (Annual)

6.50%

30

20%

1.10%

25%

d) Annual insurance rate as percent of sale price

Homeowner's Dues

e) PITI = Principal, Interest, Taxes, and Insurance

Percent of household income available for PITI (V. Low, Low, Median)

Percent of household income available for PITI (Moderate)

0.75%

\$200

30%

35%

Affordable Housing Sales Price  
Calculation Example